



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR--2021-0014; FRL-10024-56-Region 9]

Air Plan Approval; California; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or “the District”) portion of the California State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO_x) and particulate matter (PM) from indirect sources associated with new development projects as well as NO_x and PM emissions from certain transportation and transit development projects. We are approving a local rule that regulates these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule will be effective on [Insert date 30 days after date of publication in the *Federal Register*].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2021-0014. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the

FOR FURTHER INFORMATION CONTACT section.

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SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our”

refer to the EPA.

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I. Proposed Action

On February 25, 2021 (86 FR 11482), the EPA proposed to approve the following rule into the California SIP.

Local Agency	Rule #	Rule Title	Amended	Submitted
SJVUAPCD	9510	Indirect Source Review (ISR)	12/21/17 (effective March 21, 2018)	05/23/18

We proposed to approve this amended rule based on our finding that it is consistent with the relevant requirements, policy, and guidance regarding SIP relaxations because the rule revisions only clarify and extend the applicability of the rule to certain additional development projects. This revision strengthens the current SIP-approved rule. Once approved into the SIP, Rule 9510 will become federally enforceable under the CAA by its terms only for certain development projects within the geographic jurisdiction covered by the SJVUAPCD. However, as explained in our February 25, 2021 proposed rule, we continue to conclude that the rule is not fully consistent with the relevant requirements, policy, and guidance on enforceability such that

the State may rely on the rule for specific emissions credit in an attainment plan. While Rule 9510 does not meet all the evaluation criteria for full enforceability such that emissions credit can be taken, we proposed to fully approve the submitted rule because it would strengthen the SIP compared to the current SIP-approved rule. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received four comments on the proposal. One comment expresses general support for the proposed action. The three other comments are essentially the same comment, with minor variations in wording, for which we provide a summary and response below.

Comment: Three comments stated that the rules “should be strengthened to a tolerable criteria for further enforceability” before being approved.

Response: As this version of Rule 9510 would be enforceable on its terms once approved into the SIP, we are assuming that the comments are referring to amended Rule 9510 being “fully enforceable,” such that the State may rely on it for emissions credit. Regarding whether amended Rule 9510 is “fully enforceable,” we disagree that the State needs to resolve enforceability issues identified in our proposal before we can approve it into the SIP. As described in our proposal, we previously approved an earlier version of this rule on May 9, 2011 (76 FR 26609) where “we identified a number of concerns about the enforceability of the rule’s provisions, *e.g.*, provisions that allow project developers to pay a fee instead of implementing on-site pollution mitigation plans, and noted that the State would need to resolve these enforceability issues before relying on this rule for credit in an attainment plan.”¹ We noted that “[t]he District has not addressed these concerns in the submitted rule, and we therefore continue to conclude that the rule does not qualify for emission reduction credit for the purpose of any

¹ 86 FR 11482, 11484 (February 25, 2021).

attainment or progress demonstration in any area.”² In the amended version of Rule 9510 that we are approving herein, “the District revised the rule applicability to include large development projects that are not currently subject to the rule and made editorial and clarifying changes. The revisions are generally clear and strengthen the rule.”³ While this revision of Rule 9510 would continue to not meet all the evaluation criteria for full enforceability such that the rule would qualify for emission reduction credit, it would strengthen the SIP compared to the current SIP-approved rule and therefore warrants approval into the SIP.

III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving this rule into the California SIP. The December 21, 2017 version of Rule 9510 will replace the previously-approved version of this rule in the SIP.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the SJVUAPCD rule described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices,

² Id.

³ Id.

provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any

other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the ***Federal Register***. A major rule cannot take effect until 60 days after it is published in the ***Federal Register***. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the *Federal Register*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 10, 2021.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

For the reasons stated in the preamble, the EPA amends Part 52, chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Subpart F – California

2. Section 52.220 is amended by adding paragraphs (c)(348)(i)(A)(4) and (c)(518)(i)(E) to read as follows:

§ 52.220 Identification of plan-in part.

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(c) * * *

(348) * * *

(i) * * *

(A) * * *

(4) Previously approved on May 9, 2011 in paragraph (c)(348)(i)(A)(3) of this section and now deleted with replacement in (c)(518)(i)(E)(1), Rule 9510, “Indirect Source Review (ISR),” adopted on December 15, 2005.

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(518) * * *

(i) * * *

(E) San Joaquin Valley Unified Air Pollution Control District.

(I) Rule 9510, “Indirect Source Review (ISR),” amended on December 21, 2017, but not in

effect until March 21, 2018.

(2) [Reserved]

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[FR Doc. 2021-13448 Filed: 6/24/2021 8:45 am; Publication Date: 6/25/2021]